

LANT v. MANLEY et al.

(Circuit Court, E. D. Michigan. July 29, 1895.)

No. 3,387.

1. FEDERAL COURTS—JURISDICTION—PROPERTY IN CUSTODY OF STATE COURT.

A bill calling upon the federal court to dispossess administrators of a decedent of all control over the property committed to their charge, and to assume the administration and distribution of the property, and praying the appointment of a receiver, and a transfer to the court of all title deeds, securities, and papers of every kind belonging to decedent, and an injunction against all interference by the administrators with said estate, is demurrable as seeking to interfere with property in the custody of the state probate court.

2. SAME.

Property in possession of administrators appointed by the county probate court cannot be levied on under an attachment issued by a federal court.

3. FRAUDULENT CONVEYANCES—LACHES.

A bill filed in 1894 by the holder of a judgment against a decedent to obtain a discovery of decedent's assets, and to obtain relief from alleged frauds by which decedent put his property out of the reach of creditors, showed that the judgment was recovered in 1881, when the six-year period of limitations had nearly run against the cause of action, and that no effort to collect it was made until 1891, when an attachment was levied on property alleged to have been fraudulently conveyed by decedent. It appeared that the alleged fraudulent conveyances by decedent were made in 1874 and 1875, and that they were recorded within two years thereafter. *Held*, that complainant was guilty of laches.

4. SAME—DECEASED GRANTOR.

2 How. Ann. St. Mich. § 5884, provides that the executor or administrator shall prosecute suits to set aside any conveyances made by decedent to defraud his creditors, provided creditors request the bringing of such suit. *Held*, that a bill by creditors of decedent to set aside conveyances made by him should aver that the executor or administrator has been requested to institute such suit.

5. SAME.

Where matters complained of as frauds are evidenced by public records accessible to all, one seeking relief therefrom cannot excuse his delay by alleging ignorance thereof, unless he shows some affirmative act of deception, or some misleading device on the part of the party charged with fraud, intended to exclude suspicion, and to prevent inquiry and the institution of adequate measures of redress.

The complainant in this cause is a citizen of the state of Indiana, and the defendants are all citizens of the state of Michigan. Defendant Charles H. Manley is administrator of Elijah W. Morgan, deceased. Defendants Kinne and Johnson are the surviving executors and trustees of the last will and testament of Lucy W. S. Morgan, deceased; and defendant Lucy D. S. Parker is sued individually and as administratrix of the last will and testament of her deceased husband, Franklin L. Parker.

The facts upon which relief is sought by the bill, which is professedly filed as well for the complainant as all other creditors of Elijah W. Morgan, deceased, late of Washtenaw county, Mich., who will come in and contribute to the expenses of this suit, are as follows:

On the 20th day of November, A. D. 1873, said Elijah W. Morgan executed and delivered to Hattie C. Eames his three promissory notes, copies of which are annexed to the bill as exhibits, two of which are for the sum of \$1,000, with interest at 10 per cent., payable 18 months after date, and the third for the sum of \$1,333, payable, with like interest, 18 months after date. These notes were all indorsed on the 16th of September, 1873, by the payee, to George Lant, Sr., the complainant, for a valuable consideration, as is claimed by the bill. Suit was brought upon these notes by Lant in the circuit court for the county of Washtenaw, in which, on the 12th day of July, 1881, Lant recovered judgment against Morgan for the sum of \$5,882.72, damages, and costs. On the 2d day of February, 1891, an action of assumpsit was brought in this court upon said judgment recovered in Washtenaw county, and in this action a writ of attachment was taken out and delivered to the marshal of this district, against the lands, tenements, goods, chattels, moneys, and effects of Elijah W. Morgan, not exempt from execution. On the 13th day of February, 1891, the marshal levied the writ of attachment upon certain pieces or parcels of land in the county of Washtenaw, in this district, which the bill avers "then were, and still are, in the possession of said defendants Kinne, Johnson, and Parker, and Franklin L. Parker, or some of them, as is hereafter specified." The summons issued in the cause was served upon Morgan, as appears from the return of the marshal on file. The averment of the bill is that the lands attached then were and now are of the value of \$2,000, and upward. Morgan appeared in this action by attorney, and filed a plea of the general issue to the plaintiff's declaration. On the 28th of January, 1892, Morgan died, intestate, leaving Lucy C. Eames, of Kalamazoo, in the Western district of Michigan, his heir at law. On the 20th day of December, 1892, letters of administration upon the estate of Morgan were duly issued out of the probate court for the county of Washtenaw, in the Eastern district of Michigan, to defendant Charles H. Manley, who, on the 3d day of February, 1893, in obedience to a writ of seire facias issued at the instance of Lant, and the suggestion upon the records of this court of the death of Morgan, Charles H. Manley, administrator of Morgan, appeared in the cause in this court by his attorney; and on the 10th of February, 1893, an order was made in this court reviving the cause herein against said Manley as such administrator of Morgan. The bill avers that Manley thereafter seasonably caused to be served upon the defendants Johnson and Kinne, and upon Franklin L. Parker, now deceased, notice in writing of the pendency of the suit brought by complainant against Morgan, and after his death revived, as aforesaid, against Manley, as administrator; and that Manley then offered to interpose any defense to said action which the parties notified might desire. June 2, 1893, complainant recovered judgment in said cause against Manley, as administrator of Morgan, for the sum of \$8,702.20, damages, and costs, and was awarded execution therefor against the lands, tenements, goods, and chattels of the estate of said Elijah W. Morgan, deceased. Upon this judgment a writ of fieri facias was issued, and delivered to the marshal of this district, commanding him to make said sum of \$8,702.20 out of the lands, tenements, goods, and chattels of the said Morgan. This writ was returnable August 25, 1893. September 8, 1893, the marshal made a return of nulla bona on said writ. On the 21st of February, 1894, complainant caused an alias writ of fieri facias to be issued on the judgment, returnable April 2, 1894. This writ was levied upon the lands and tenements upon which the writ of attachment issued at the institution of the suit in this court had been levied. The title of record of the lands levied upon under this alias writ was then in the defendants, as executors of Lucy W. S. Morgan and Franklin L. Parker.

Lucy W. S. Morgan, the wife of Elijah W. Morgan, died May 12, 1887, leaving her last will and testament, whereby defendants Johnson and Kinne and Franklin L. Parker, now deceased, were appointed executors and trustees, and to them were devised and bequeathed all her estate, for the purposes specified in her will. This will was probated June 20, 1887, by the decree of the probate court of the county of Washtenaw, and letters testamentary thereunder were granted to Parker, Kinne, and Johnson, the executors named in the will, who duly qualified and entered

upon the execution of their trust. Defendants Johnson and Kinne are still acting as such executors and trustees. Franklin L. Parker, the third executor, died on the 20th of February, 1894, leaving a last will and testament, whereby he devised and bequeathed all of his estate, real and personal, and the proceeds thereof, to his wife, defendant Lucy D. S. Parker, in trust for the purposes specified in his will, and appointed her sole executrix thereof. Parker's will was on the 26th of March, 1894, duly admitted to probate by the probate court for the county of Washtenaw; and the administration of his estate was granted to Lucy D. S. Parker, who qualified as executrix, and entered upon execution of her duties as such, and still is in the administration thereof.

The bill alleges complainant has reason to believe, and does believe, and so charges the fact to be, that the estate of Elijah W. Morgan has property, deeds, and other equitable things in action, or effects, of the value of more than \$2,000, exclusive of all prior just claims thereon, which complainant has been unable to reach by execution on his said judgment against Morgan and his estate; denies collusion with either of defendants or any other person; and avers that the bill is brought solely for the purpose of compelling payment and satisfaction of the judgment recovered against defendant Manley, as administrator of Morgan, and for the benefit of such other creditors as may be entitled to share; that defendants have possession of personal property belonging to the estate of Elijah W. Morgan, or in which that estate is in some manner beneficially interested; and alleges that defendants hold personal property, judgments, mortgages, deeds, and choses in action, etc., in trust for the benefit of the estate of Morgan, and also that defendants hold in like trust real estate in this or some other state or territory, or chattels real, contracts relating to real estate, stocks, etc., of which it prays a discovery, and of the purpose for which the same are held, the amount, kind, value, and particulars thereof, and the terms and conditions on which the same are held. The bill then sets forth descriptions of pieces or parcels of land situated in Washtenaw county, of which, on information and belief, it charges that Elijah W. Morgan was seised and possessed on the 20th of November, 1873, stating their value to be upward of \$2,000; and that defendants Johnson and Kinne, as surviving executors of the last will and testament of Lucy W. S. Morgan, deceased, claim to be the owners, and whereof they are and have been in possession under such claim, by virtue of sales and conveyances from Elijah W. Morgan to Lucy W. S. Morgan. These conveyances, it is charged on information and belief, were merely colorable, and made with a view of protecting the property and effects of the grantor from the claim of complainant and other creditors of said Morgan, and to enable him to control and enjoy the same and the avails thereof; and the bill prays a discovery of the amount and value of the lands so conveyed, terms and conditions of such conveyances, and the disposition made of the avails thereof. Like charges are made by the bill relative to the conveyance by Morgan of other lands situated in the city of Ann Arbor, the value whereof is stated to be upwards of \$2,000, which are now in the possession of defendant Lucy W. S. Parker, executrix of the last will and testament of Franklin L. Parker, deceased, who claims to be the owner thereof as such executrix; that said Franklin L. Parker was in possession of said lands from the death of Morgan until his own decease, claiming under deeds from Morgan, which are alleged to be merely colorable, and made to protect the property and effects of Morgan against the claims of the complainant and other creditors. Other lands described in the bill are, upon information and belief, alleged to have been conveyed to defendant Lucy D. S. Parker, who claims and has been in possession thereof, under claim of ownership, since the death of Elijah W. Morgan. These conveyances, the bill charges, were of the same nature as those made to Lucy W. S. Morgan and Franklin L. Parker, and for the same purpose, and a discovery is also prayed of the tenure and trusts under which the same are held.

Upon information and belief, complainant alleged that Elijah W. Morgan, on January 14, 1873 and March 20, 1874, had interest in lands described in Exhibit D, attached to the bill, which, about the last-named date, said Morgan, for the purpose of hindering, delaying, and defrauding complainant